COURT NO.3

Criminal appeal no.103 of 2001

Mukesh ..Appellant

Vs.

State of Uttaranchal ..Respondent

Hon'ble Irshad Hussain J.

This is an appeal against the judgment and order dated 03.04.2001 passed by the Sessions Judge, Dehradun convicting and sentencing the appellant Mukesh under section 304-B of I.P.C. to undergo rigorous imprisonment for ten years for causing dowry death of his wife Smt. Tara Devi. By the said judgment other co-accused Hari Singh, Smt. Mam Kaur and Km. Manju, the father, mother and sister respectively of the said appellant were acquitted of the charges under sections 498-A, 304-B and section 4 of the Dowry Prohibition Act, 1961. Appellant was also not held guilty and acquitted of the charges under sections 498-A I.P.C. and section 4 of the Dowry Prohibition Act.

Written F.I.R. of the case, Ext.ka.1 was filed by informant Om Bahadur, P.W.1, the father of the victim on 14.02.1994 at about 15:30 hours at police station, Kotwali Dehradun. The prosecution case disclosed by the said F.I.R. is that informant's daughter Tara Devi and appellant Mukesh while working together in a drug factory fell in love and got themselves married about five months before the occurrence. On 13.02.1994 at about 9:30 P.M. informant was told by some one that his daughter Tara Devi had been set to fire by the appellant and other family members, the father, mother and sister of the appellant. The informant wert not the residence of the accused-appellant where he was informed that his daughter had been admitted in hospital. He

rushed to the hospital where he found Tara Devi lying unconscious with severe burn injures. Tara Devi succumbed to burn injuries in the hospital in the morning of 14.02.1994. Thereafter the said report was lodged by the informant. According to the prosecution, Tara Devi used to be taunted by her inlaws for not bringing dowry.

After registration of the case, investigation was taken up by S.I. Ishwar Singh Tomar, P.W.5. He held inquest on the dead body of Smt. Tara Devi and later part of the investigation was taken up by C.O. City, Dehradun Sri Kameshwar Prasad. Postmortem examination on the dead body was conducted by Dr. D.S. Rawat, P.W.7 who proved the postmortem report, Ext.ka.9 and stated that the deceased had 100% burns which were the cause of death. No smell of kerosene oil was detected. Charge-sheet, Ext.Ka.10 against the appellant and three others names above was submitted on 09.03.1994.

The prosecution in order to prove the charges against the appellant examined seven witnesses. P.W.1, Om Bahadur, informant supported the prosecution case as contained in the written F.I.R. P.W.2, Smt. Neema Devi, the mother of the victim also gave out that her daughter used to be illtreated by the appellant and others for and in connection with the dowry demand. P.W.3, Adarsh Kumar is a witness of the inquest. P.W.4, constable Narendra Singh proved the check F.I.R. and copy of general diary regarding registration of the case against the appellant and others. P.W.5, S.I. Ishwar Singh Tomar proved the steps taken towards the investigation of the case and also proved the document of inquest etc. P.W.6 Anoop, a resident of Lansdowne, district Pauri Garhwal gave evidence to the effect that he used to visit the house of the appellant while studying in Dehradun in the year 1993 and at that time Smt. Tara Devi told him that she was being put to harassment by her husband and others for not bringing dowry in the marriage and also in connection with the demand of sum of Rs.50, 000.00. P.W.7 is the medical officer who performed the postmortem examination. This all is the evidence of the prosecution.

The appellant did not admit the accusations of the prosecution and in his written statement under section 243 (1) of Cri.P.C., even claimed that Smt. Tara Devi was not his wife. He admitted that he and Smt. Tara Devi were employed together in a drug factory and on the day of the occurrence he had visited her and that her clothes caught fire wile she was preparing tea on an electric heater. He doused the fire and took injured Smt. Tara Devi to the hospital.

Witness Anil Kumar (D.W.1) was examined in defence. He is the husband of accused Smt. Manju, the sister of the appellant. He also stated that her in-laws who are the accused in the case, reside separately form the appellant Mukesh. He also claimed that Smt. Tara Devi was not married to the appellant.

Learned Sessions Judge on an appreciation of the evidence on record and the circumstances of the case, accepted the claim of the prosecution in regard to the harassment of the victim Smt. Tara Devi by her husband, the appellant for and in connection with the demand of dowry, but rejected the claim in regard to other accused who have as mentioned above, been acquitted of the charges leveled against them. It may be pointed out here that the appellant was also acquitted of the charge under section 498-A of I.P.C. and Section 4 of the Dowry Prohibition Act and no appeal by the State was preferred against the above judgment.

Heard Sri J.P.Joshi, Advocate for the appellant and Additional Government Advocate and have carefully considered the material on record, the circumstances and the probabilities of the case. Not much controversy was raised by the learned counsel for the appellant in regard to the inference drawn by the learned Sessions Judge that Smt. Tara Devi had entered into wedlock with the appellant. They were residing together as husband and wife. Learned counsel for the appellant, however, made criticism of the evidence of the prosecution to bring home his point of view that the allegations of the prosecution

have not been established beyond reasonable doubt and further that in the peculiar circumstances of the case, no legitimate presumption as enjoined by Section 113-B of the Evidence Act could have been drawn to the effect that the death of Smt. Tara Devi was dowry death and charge under section 304-B of the I.P.C. stands proved against the appellant.

At the outset it need to be mentioned that in order to seek a conviction against a person for the offence of dowry death, the prosecution is obliged to prove that:

(a) the death of a woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances;
(b) such death should have occurred within 7 years of her marriage;
(c) the deceased was subjected to cruelty or harassment by her husband or by any relative of her husband.
(d) such cruelty of harassment should be for or in connection with the demand of dowry; and
(e) to such cruelty or harassment the deceased should have been subjected to soon before her death.

If from the evidence and circumstances, the above factors are established a legitimate presumption of dowry death shall be drawn against the person charged with the offence by resorting to the mandate of section 113-B of the Evidence Act. So far as the present case is concerned, the first two circumstances (a) and (b) are established in view of the fact that Smt. Tara Devi died due to burn injuries within seven years of her marriage. In regard to the other circumstances enumerated under clauses (c), (d) and (e), it need to be mentioned that the learned Sessions Judge was, on the basis of the evidence on record, of the view that since the marriage of the appellant with the victim was a love marriage, therefore no question of any demand of dowry by the appellant arose and this was not the case of demand of dowry. The appellant was, therefore, held not guilty and acquitted of the charge under section 498-A of the I.P.C. and section 4 of Dowry Prohibition Act. There is no challenge to the

acquittal from the side of the State. In the face of such a conclusion it does not stand to reason as to how the appellant had been held guilty of an offence punishable under section 304-B of the I.P.C. because in the absence of direct evidence of the occurrence the presumption under section 113-B of the Evidence Act could have only been drawn after a finding that there was demand of dowry and the victim was subjected to cruelty of harassment for or in connection with the demand of dowry soon before her death. The learned Sessions Judge had recorded no categorical finding in regard to these circumstances and this is the reason that the impugned judgment shows inconsistent approach as referred to above.

However, considering the power which this Court has in relation to an appeal against conviction the evidence on record and the circumstances need to be independently appraised to come to a conclusion about the charge leveled against the appellant. The evidence and circumstances with relation to the factors mentioned above remain to be considered. P.W.1, Om Bahadur, informant is the father of the victim and he gave out that after about a month of the marriage of his daughter, Smt. Tara Devi told him that she is being teased and taunted for not bringing any dowry in the marriage. According to him, 2-3 days prior to the date of the occurrence, i.e. 13.02.1994 Smt. Tara Devi alongwith Smt. Mam Kaur visited him and took sum of Rs.500.00 for household expenses. At that time demand of sum of Rs.50, 000.00 towards the dowry was also made. As pointed out by the learned counsel for the appellant, no mention of the said demand of Rs. 50, 000.00 dowry was made in the written F.I.R. Considering this there is force in the argument that the claim made was an afterthought. As regards complaint said to have been made by Smt. Tarad Devi to the informant after one month of the marriage, it is of significance that said claim was not made in such a way before the investigating officer. Informant was not even aware of the name of the in-laws and sister-in-law of his daughter and this was the reason that these accused were not mentioned by their names

in the F.I.R., Ext.ka.1. It does not stand to reason as to how in a situation like this, the informant could tell that two or three days before the occurrence his daughter visited him alongwith Smt. Mam Kaur, the mother-in-law. This again shows that the claim made in regard to the demand is an afterthought merely with an attempt to support the allegation of the F.I.R. The evidence of the informant, in fact, does not repose confidence. It will not be safe to place implicit reliance on his testimony. The learned Sessions Judge was not justified in placing reliance on his evidence.

P.W.2, Smt. Neema Devi is the mother of the victim. Her evidence can not be placed on a better footing. The reason is that according to the witness sum of Rs.50, 000.00 towards dowry was demamded by her daughter in the company of the mother-in-law when no fourth person was present. As mentioned above the informant, P.W.1 has not affirmed the presence of his wife at the time when sum of Rs.50, 000.00 was demanded by his daughter Smt. Tara Devi and the contradiction in the evidence of these witnesses has appeared only on account of the fact that no such demand was made and there was no occasion for the victim to come to the witnesses to put forward the demand for money on behalf of her in-laws or the husband.

Further witness Smt. Neema Devi claimed to have visited the house of her daughter a month prior to the occurrence and has held talks with the daughter. At that time no complaint of any kind was made by Smt. Tara Devi to the witness. If Smt. Tara Devi were to be subjected to harassment or cruelty, she could have told all about it to the witness on her visit to the house at that time. As submitted on behalf of the learned counsel for the appellant, the evidence of this witness does not support the prosecution version and it cannot be safely accepted that Smt. Tara Devi had complained of cruelty meted out to her by the appellant or other family members.

P.W.6, Anoop aged about 18 years was also examined to support the alleged claim that Smt. Tara Devi was used to be subjected to harassment for in connection of demand of dowry. He was a student of an Inter College of Dehradun in the year 1993. He was studying in Class IX. He claimed to have for the first time visited the house of Smt. Tara Devi with the brother of the said victim in the month of July 1993. He claimed that he was informed that the marriage of Smt. Tara Devi had been solemnized about 6 months earlier. This version of the witness itself indicate that he is a got-up witness. The occurrence took place in the month of February 1994 and according to the prosecution, the marriage of the victim took place about five months before the occurrence, i.e. probably in the month of October, 1993. It is also the case of the prosecution that after marriage Smt. Tara Devi had resided with the appellant. Prior to October there was no occasion for the witness to have visited the house of appellant and Smt. Tara Devi in the month of July 1993. At that time three was also no occasion for giving information to the witness that the marriage of Smt. Tara Devi took place about six months before. In the totality of circumstances of the case, no In other words it will not be safe to place implicit reliance on the claim of this witness that Smt. Tara Devi told her that she was being illtreated by the appellant and others in connection with the demand of dowry. In other words the evidence of this witness also deserves to be discarded.

Form above it is evident that there is no reliable evidence to indicate that Smt. Tara Devi was subjected to cruelty or harassment by the husband, the appellant or any other relative of her husband soon before her death for or in connection with demand of dowry. Consequently the earlier mentioned circumstances which are essential ingredients to prove a dowry death have not been established. Therefore, presumption of dowry death could not have been drawn against the appellant under section 113-B of the Evidence Act.

It need to be again pointed out that learned Sessions Judge has also not found any evidence to support the allegation of harassment and cruelty towards the victim Smt. Tara Devi at the hands of the appellant or other family members and also any evidence of demand of dowry and this was the reason that that appellant was also acquitted of the charge under section 398-A of the I.P.C. and section 4 of the Dowry Prohibition Act. It was strange enough that despite such observations and conclusions, the learned Sessions Judge went on to hold the charge under section 304-B of I.P.C. having been proved beyond doubt against the appellant. The evidence and circumstances a discussed above, lead to the inference that the essential ingredients of the offence as referred to above could not be established, therefore the appellant should not have been held guilty of the charge of dowry death.

The investigating officer, P.W.5, Ishwar Singh Tomar testified that appellant Mukesh was admitted for injuries in the hospital when the victim Smt. Tara Devi was also there in critical state. He had not obtained the medical examination report of the appellant from the hospital. The bed head ticket of the victim Smt. Tara Devi was also not received by him. Here it need to be mentioned that according to P.W.2, Smt. Neema Devi, her daughter Smt. Tara Devi was lying unconscious in the hospital and died later on in the night. These circumstances indicate that the victim had perhaps not disclosed anything to the medical officer regarding the manner in which she sustained burn injuries. It is also of significance that the claim of the appellant that he took the injured Smt. Tara Devi with burn injuries to the district hospital and got her admitted there has not been disputed. The appellant in his defence version claimed that Smt. Tara Devi got burnt while preparing tea on an electric heater and that he had also given this information to the medical officer when the victim was got admitted in the hospital. Considering the totality of circumstances of the case and absence of any reliable evidence of cruelty and

harassment for or in connection with demand of dowry, it will in the circumstances of the case be safe to draw an inference that the incident was accidental as a result of which Smt. Tara Devi got burnt and ultimately breather her last in the hospital. The learned Sessions Judge had not taken these aspects of the matter into consideration.

For the above reasons and discussions, the judgment of the learned Sessions Judge regarding conviction of the appellant, Mukesh under section 304-B of the I.P.C. cannot be upheld. The appellant is held not guilty and is acquitted of the charge under section 304-B of the I.P.C.

In the result, this appeal succeeds and is allowed accordingly. The appellant is in jail. He shall be released forthwith, if not wanted in connection with any other offence.

20th November, 2002./B

(Irshad Hussain, J.)